

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL ROOM
SEP 11 1 20 AM '00

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 99-342
FM Broadcast Stations.)	RM-9773
(George West, Pearsall and Victoria, Texas))	RM-9844
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 30, 2000

Released: September 8, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making and Order to Show Cause in this proceeding. 14 FCC Rcd 21133 (1999). John R. Furr ("Furr") filed Comments and Reply Comments. Charlotte Radio Broadcasting Company ("Charlotte Radio") filed Comments. For the reasons discussed below, we are substituting Channel 281C1 for Channel 281A at Pearsall, Texas, and are modifying the outstanding construction permit for the Channel 281A allotment to specify operation on Channel 281C1. In order to accommodate this upgrade, we are also substituting Channel 265A for Channel 281A at George West, Texas, and are modifying the outstanding construction permit at George West to specify operation on Channel 281A.

Background

2. At the request of Furr, permittee of the Channel 281A allotment at Pearsall, Texas (File No. BPH-960926MF), the Notice of Proposed Rule Making and Order to Show Cause in this proceeding proposed the substitution of Channel 281C1 for Channel 281A at Pearsall and modification of the Furr construction permit to specify operation on Channel 281C1. 14 FCC Rcd 21133 (1999). In order to accommodate the Channel 281C1 upgrade at Pearsall, an Order to Show Cause was directed to Four M.L. Broadcasting, permittee of the Channel 281A allotment at George West, Texas (File No. BPH-940207MA), to show cause why its construction permit should not be modified to specify operation on Channel 265A. Four M.L. Broadcasting did not respond to the Order to Show Cause and is therefore deemed to have consented to the proposed modification of its construction permit. Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act, 2 FCC RCD 3327 (1987). In response to the Notice, Furr filed Comments reiterating his interest in the proposed upgrade and his willingness to reimburse the permittee of the Channel 281A allotment at George West for the reasonable and prudent costs of changing its channel. In a related context, Victoria Radio Works, Ltd. ("Victoria Radio"), licensee of Station KEPG, Channel 265A, Victoria, Texas, filed a one-step upgrade application to specify operation on Channel 265C3 (File No. BPH-19991020AAX). Inasmuch as this application was

filed by the comment date in this proceeding, it will be considered as a timely counterproposal.¹ Finally, Charlotte Radio, proponent for a Channel 227A allotment at Charlotte, Texas, in MM Docket No. 99-304, filed Comments. In its Comments, Charlotte radio suggests an alternate site for the proposed Channel 281C1 upgrade at Pearsall in order to accommodate its Channel 227A proposal at Charlotte.

3. Thereafter, Victoria Radio filed a Request to Withdraw Counterproposal. In that Request, Victoria Radio notes that it had earlier requested withdrawal of its pending application and now seeks to withdraw its counterproposal in this proceeding. In accordance with Section 1.420(j) of the Rules, Victoria Radio filed Declarations from John R. Furr and John W. Barger, president of Victoria Radio. In those Declarations, both parties state that there are no agreements between Furr and any principals of Victoria Radio concerning the withdrawal of the Station KEPG one-step application. Both parties further state that there has been no consideration paid or promised in connection with withdrawal of the counterproposal in this proceeding. In a related context, Charlotte Radio filed a Withdrawal of Comments stating that it has abandoned its interest in a Channel 227A allotment. In accordance with Section 1.420(j) of the Rules, the president of Charlotte Radio filed an affidavit stating that neither Charlotte Radio or any of its principals have received or promised any consideration in excess of legitimate and prudent expenses for withdrawing its proposal for the Pearsall, Texas, allotment or its Comments in this proceeding.

4. We are substituting Channel 281C1 for Channel 281A at Pearsall, Texas, and are modifying the outstanding construction permit (File No. BPH-960926MF) at Pearsall to specify operation on Channel 281C1. Upon commencement of service, this will enable the new facility at Pearsall to serve an additional 136,010 persons in an area of 13,905 square kilometers.² In order to accommodate this upgrade at Pearsall, we are substituting Channel 265A for Channel 281A at George West, Texas, and are modifying the outstanding construction permit (File No. BPH-19940207MA) to specify operation on Channel 265A.³ In accordance with Circleville, Ohio, 8 FCC Rcd 159 (1967), Furr is required to reimburse Four M.L. Broadcasting for its reasonable and prudent costs of changing its channel at George West. Since Pearsall and George West are located within 320 kilometers of the U.S.-Mexican border, both of these allotments are hereby conditioned on concurrence of the Mexican Government.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, that effective October 24, 2000, the FM Table of Allotments,

¹ Public notice of this counterproposal was given on April 4, 2000 (Report No. 2401).

² The reference coordinates for the Channel 281C1 allotment at Pearsall, Texas, are 28-44-52 and 98-50-13.

³ The reference coordinates for the Channel 265A allotment at George West, Texas, are 28-24-26 and 98-10-05.

Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
George West, Texas	228C3, 265A
Pearsall, Texas	237A, 281C1

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of John R. Furr for Channel 281A at Pearsall, Texas, (File No. BPH-960926MF) IS MODIFIED to specify operation on Channel 281C1, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for construction (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Four M.L. Broadcasting for Channel 281A at George West, Texas, (File No. BPH-19940207MA) IS MODIFIED

- (a) Nothing contained herein shall be construed to authorize any change in the outstanding construction permit for Channel 281A at George West, Texas (File No. BPH-19940207MA), except for the channel as described above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301);
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects to the above-referenced authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of the commencement of program tests.

8. Pursuant to Section 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, John R. Furr, receiving an upgrade, is required to submit a rulemaking fee in addition to the fee required for the application to effect the upgrade at Pearsall, Texas.

9. IT IS FURTHER ORDERED, that the Secretary of the Commission shall send a copy of this Report and Order BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to:

FOUR M.L. Broadcasting
115 West Avenue "D"
Robstown, Texas 78380
(permittee for Channel 281A, George West, Texas)

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau